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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,992	07/30/2003	Ronald C. Elliott	ECC-02200	2200
28960	7590	05/30/2006		
HAVERSTOCK & OWENS LLP 162 NORTH WOLFE ROAD SUNNYVALE, CA 94086			EXAMINER OLSON, LARS A	
			ART UNIT	PAPER NUMBER
			3617	

DATE MAILED: 05/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/631,992

Applicant(s)

ELLIOTT ET AL.

Examiner

Lars A. Olson

Art Unit

3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-36 and 38-48 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-8, 10-35, 44-46 and 48 is/are allowed.
- 6) ☒ Claim(s) 36, 38-42 and 47 is/are rejected.
- 7) ☒ Claim(s) 43 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

1. An amendment was received from the applicant on April 17, 2006.
2. Claims 9 and 37 have been canceled.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 36, 38, 39 and 47 are rejected under 35 U.S.C. 102(b) as being anticipated by Morita (US 5,135,110).

Morita discloses the same label holder as claimed, as shown in Figures 1-6, that is comprised of a label holder, defined as Part #2, with a pair of protrusions that are configured to mate and rotatably and detachably secure said label holder with a pair of apertures, defined as Part #7a, of a container, defined as Part #8, where said label holder is configured to hold a label, defined as Part #11, while rotating.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morita.

Morita, as set forth above, discloses all of the features claimed except for the use of a label of a specific size.

The use of a label of a specific size in combination with a label holder would be considered by one of ordinary skill in the art to be a design choice based upon the desired size of said label, and the required size of said label in order to make indicia that is printed on said label readable.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention, to utilize a label of a specific size in combination with the label holder as disclosed by Morita for the purpose of providing a label holder that is capable of holding and supporting a range of label sizes.

Allowable Subject Matter

7. Claims 1-8, 10-35, 44-46 and 48 are allowed.

8. Claim 43 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

9. Applicant's arguments with respect to claims 36, 38-42 and 47 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Any inquiry concerning this communication from the examiner should be directed to Exr. Lars Olson whose telephone number is (571) 272-6685.

lo

May 25, 2006

LARS A. OLSON
PRIMARY EXAMINER

Lars Olson
5/25/06